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Standing Committee on  
Regulations and Private Bills

Draft report on regulations

3<sup>rd</sup> Session  
41<sup>st</sup> Parliament  
Wednesday 28 March 2018

Comité permanent des  
règlements et des projets  
de loi d'intérêt privé

Rapport préliminaire  
sur les règlements

3<sup>e</sup> session  
41<sup>e</sup> législature  
Mercredi 28 mars 2018

Chair: Ted McMeekin  
Clerk: Christopher Tyrell

Président : Ted McMeekin  
Greffier : Christopher Tyrell

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE  
ON REGULATIONS  
AND PRIVATE BILLS

Wednesday 28 March 2018

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
RÈGLEMENTS ET DES PROJETS  
DE LOI D'INTÉRÊT PRIVÉ

Mercredi 28 mars 2018

*The committee met at 0901 in committee room 1.*

## DRAFT REPORT ON REGULATIONS

**The Chair (Mr. Ted McMeekin):** Welcome, everybody. I'm pleased to call this meeting of the Standing Committee on Regulations and Private Bills together. We will now turn our attention to the draft report on regulations made in the second half of 2017.

On February 28, 2018, this committee requested that the Ministry of Agriculture, Food and Rural Affairs be invited to appear before us to discuss O. Reg. 201/17, and they have joined us here today.

I'd like to invite our legislative researcher to provide us with a brief refresher on the regulation in question. We'll then hear from ministry officials—thank you for coming—whatever comments they have, and then this committee will be able to ask whatever questions they have and hopefully we'll find some way forward.

Ms. Hauerstock.

**Ms. Tamara Hauerstock:** Good morning. As noted, the regulation we're here to discuss this morning is O. Reg. 201/17 made under the Farm Implements Act. This regulation incorporates by reference certain technical safety standards produced by organizations such as the Canadian Standards Association, the International Organization for Standardization and the Society of Automotive Engineers. The regulation provides that these standards are incorporated as they are amended from time to time.

What we noted in the draft report is that section 62(3) of the Legislation Act, 2006, generally requires static incorporation of documents by reference. This means incorporating a specific version of a document at a defined date. This requirement applies to every act and regulation unless a contrary intention appears or its application would give a term or provision a meaning that is inconsistent with the overall legislative context.

We did not locate authority in the Farm Implements Act for rolling, that is to say non-static incorporation of documents into regulation. That's what we raised in the draft report, noting that potentially the Farm Implements Act does not express an intention to incorporate documents by reference on a rolling basis.

**The Chair (Mr. Ted McMeekin):** Okay. We have two representatives, Colleen and Shannon?

**Ms. Shannon DeLeskie:** Yes.

**The Chair (Mr. Ted McMeekin):** Would you introduce yourself and tell us what role and function you play and then proceed to respond as fitting?

**Ms. Shannon DeLeskie:** Sure. I'm Shannon DeLeskie. I'm counsel with the Ministry of the Attorney General with the agriculture, food and rural affairs branch—so counsel, essentially, to OMAFRA. I'm here with my colleague Colleen Fitzgerald-Hubble, who's director of the environmental management branch. I wanted to thank the committee for the opportunity for us to come and speak to you this morning.

The OMAFRA minister did amend the regulation, as you've indicated, on July 1, 2017. The regulation is important because it updated a number of references to safety standards for tractors; specifically, safety standards related to things like rollover protection, instructional seats and seatbelts.

Some of the standards that we incorporated were already incorporated on a rolling basis, as Tamara has indicated, meaning that as the standard is updated over time, that updated standard continues to be part of the living regulation. We updated those rolling incorporations because a number of the standards' titles had changed. We believed at that time, and still believe that because of the nature of the authorities set out in the Farm Implements Act, we have the ability to use that rolling incorporation for these safety standards, and that in doing so, we meet the regulatory authority of the Farm Implements Act and under the Legislation Act.

In preparing to speak to you guys today, and also listening to Tamara speak this morning, I think it's important to bring a couple of points forward. First of all, in the Legislation Act, as Tamara indicated, section 62 is the section that deals with rolling incorporations. The Legislation Act also has another provision, at sections 46 and 47, that addresses where the rules in part 6 apply. So section 46 says that, "Every provision of this part applies to every act and regulation," but then section 47 says, "Section 46 applies unless,

"(a) a contrary intention appears; or"—and this is the important "or"—

"(b) its application would give to a term or provision a meaning that is inconsistent with the context."

What you've essentially got is a section 47 that basically says the rules in part 6 apply unless (a) you

have an express or explicit contrary intention, or (b) essentially sets up a contextual consideration. What we've got with the Farm Implements Act is actually a reliance on (b), which is the contextual consideration. So the Farm Implements Act provides the minister with authority to create regulations in relation to safety standards. It allows for adoption by reference, but it is silent on whether or not that adoption by reference is a rolling incorporation.

However, when you look at the act as a whole—and my colleague Colleen will explain how the act works and how those safety standards play a very, very important and central part of that act and have since the act's inception—it becomes clear that the intention would have been to allow for those safety standards to have been incorporated on a rolling basis. That is why the ministry has continued to operate in this manner.

It would be inconsistent with the act, OMAFRA's position is, to create the specific role of the director under the act and the specific role of those safety standards, which are an important part of that act, and not to have allowed for the enforcement and tracking of those standards on a rolling incorporation and stalled to make sure the regulation was amended to update it.

I'll turn it over to Colleen to explain how the act works.

**Ms. Colleen Fitzgerald-Hubble:** The Farm Implements Act is administered by the environmental management branch in our ministry. I am the director of that branch. In that role, I am also the director appointed by the minister under the Farm Implements Act with the responsibility for administration and enforcement of the act. As the director, I'm provided the authority under the act to delegate the powers, duties and functions to ministry staff.

The minister establishes safety standards through regulations, and the ministry enforces those standards to improve machinery safety and reduce farm fatalities and injuries. The standards prescribed in the general regulation under the act relate to the requirements for rollover protection structures on agricultural tractors, testing requirements for those structures and the design requirements for instructional seats.

Engineers within my branch conduct research related to farm implement design, construction, performance and safety as part of the responsibilities and as set out in the director's power under section 4, subsection 5, of the act. This is accomplished through participation on the Canadian Standards Association agricultural machinery technical committee. Currently, the ministry's farmstead optimization and safety engineering specialist is actively engaged as the chair on this committee.

The CSA committee is made up of members that represent diverse interest groups, including farmers, manufacturers, regulators, farm and labour safety associations and farm advocacy groups. The committee evaluates current best practices used across industries and shares safety knowledge that is used to develop new standards and update requirements in existing standards.

The committee also reviews relevant international standards and validates the content and applicability to meet the needs of Canadian manufacturers and producers.

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The committee aims to develop Canadian standards and allow Canadian and North American manufacturers to sell their equipment in Canada and internationally. This aims to streamline, harmonize and facilitate best requirements for farm machinery safety and trade across various jurisdictions. Enabling rolling updates to safety standards in the regulation has the potential to help prevent injuries linked to new equipment that has rollover protection systems installed.

Most of the large equipment manufacturers are contributing members of the association, either through the CSA or ISO, and are knowledgeable or provided comments for the changes that occur through standards development. Ministry engineers are also actively engaged in this review process.

Adopting harmonized safety standards reflects the evolution of the industry in the area of rollover protection systems for agricultural machinery. Our regulations need to be up to date with the latest standards or you risk our regulations being out of date with the majority of the industry.

**Ms. Shannon DeLeskie:** We wanted to thank you for allowing us to present, and we're open to hearing your questions.

I also wanted to add that if the committee disagrees with our assessment that we are able to use the rolling incorporations, we would request that the committee either make no recommendation or provide a recommendation that leaves OMAFRA with the most flexibility possible to determine the appropriate path forward to continue to be able to use these sorts of standards.

**The Chair (Mr. Ted McMeekin):** Thank you for appearing before the committee today. Are there questions or comments? Ms. Matthews.

**Ms. Deborah Matthews:** Thank you for this. I just want to confirm that these safety regulations are very important. We've all heard of awful, catastrophic accidents on farms, and if they can be avoided, I think we all agree that we should support that. It is necessary to ensure that these regulations are updated regularly.

Just to be clear: These are available to the public as they're updated; is that correct?

**Ms. Colleen Fitzgerald-Hubble:** Yes.

**Ms. Deborah Matthews:** Okay. Can you think of any other examples where standards are incorporated on a rolling basis in regulation?

**Ms. Shannon DeLeskie:** Sure. In preparation for speaking to you guys today, I actually did a quick scan of e-Laws. This is by no means an authoritative summary, but I can tell you that I quickly looked and I found standards dealing with highway bridge design, earth energy heat pumps, environmental management systems, propane storage and handling, children's play spaces and equipment, and various ambulance-related standards, just in a quick scan of e-Laws. I also looked back at the acts

under which those were made. The majority of them do contain an express rolling incorporation allowance, but not all of them do.

**Ms. Deborah Matthews:** So this allows those changes to be made more quickly, potentially saving lives?

**Ms. Shannon DeLeskie:** Yes. The standards in the regulation reflect the standards that are the most scientifically valid and appropriate.

**Ms. Deborah Matthews:** Okay. Thank you.

**The Chair (Mr. Ted McMeekin):** Ms. French.

**Ms. Jennifer K. French:** The possible recommendation that the committee has before them, do you have a copy of that, or is that on your radar? The last time that we met there was the possible recommendation—the government felt that they wanted to have your input. Certainly, your presentation has been very informative, but I would also be interested to know what your thoughts were on the recommendation before us. As it states here, the committee, through the last couple of years that we have been sitting on this committee—when it comes to rolling incorporation, we have felt strongly about rolling incorporation, that things should be updated as they're updated, so to speak.

The possible recommendation, as it states here—do they have a copy of it? If I were to read it to you—

**Ms. Shannon DeLeskie:** I do have a copy of your Hansard transcript from the last meeting, and that has the recommendation in it, I believe, but if you read it for the record, that would be helpful, too.

**Ms. Jennifer K. French:** Just for comparison's sake. I remember what we talked about but not word for word.

A possible recommendation: "The committee recommends that the" Ministry of Agriculture, Food and Rural Affairs "either (a) take steps to amend regulation 369 of" all of that "to comply with the requirements of section 62 of the Legislation Act ... or (b) take steps to bring forward a bill to amend the Farm Implements Act to ensure that regulation 369 complies with the requirements of section 62."

We had an either/or. Are either of those problematic from where you sit? You said you wanted flexibility for OMAFRA if we make a recommendation. Your thoughts, please.

**Ms. Shannon DeLeskie:** We'd be advocating that either what we're doing is appropriate and under the proper authorities, or a recommendation that—as you did, I believe, with a situation with school buses previously; just acknowledge it and then not make a recommendation. But if you do choose to make a recommendation—Ms. Hauerstock may be able to correct me if I'm wrong—I believe your recommendation could actually give us the option of either/or, which would then let the ministry have the flexibility, depending on what pressures are on and whether we're able to get a bill for it, or whatever. It gives some flexibility there.

**Ms. Jennifer K. French:** As I recall, the recommendation that gave a choice to your ministry—I think I thought it was appropriate at the time, because it wasn't

prescriptive. As you said, there was some flexibility. So to either amend it to comply with the requirements or take steps to bring forward a bill to amend it—it seemed there was enough choice in there.

**Ms. Shannon DeLeskie:** Yes, that definitely is more flexible than if you chose just one or the other and put that down in the final report.

**Ms. Jennifer K. French:** Okay.

**The Chair (Mr. Ted McMeekin):** Mr. Walker.

**Mr. Bill Walker:** Just for clarity—it seems to be technical, however, the Farm Implements Act does not specifically authorize rolling incorporation of documents into regulations, but you want to have that rolling. So why can't we just amend the bill to give specific authority to allow rolling incorporation? It seems to me that this would put us back in compliance and resolve this issue. Can you just elaborate on why that couldn't be a possibility?

**Ms. Shannon DeLeskie:** The practice of speaking to whether rolling incorporation can be included in legislation or not: In more modern acts, you'll see a lot of regulatory provisions that actually expressly state that you can incorporate a document as it may be amended from time to time, which allows for that rolling incorporation. The Farm Implements Act is older. It's been around since before the 1990s.

Colleen and I were talking before we came here. It's an important program but it's not the front-and-centre program for OMAFRA, so it's not a bill that has necessarily been amended that frequently. If the bill were to be opened, there would be the opportunity to put that in there, but it hasn't as of yet, which is why we're relying on the contextual interpretation in 57(b) that I was talking to earlier, and why we would continue to rely on that until the opportunity came.

**Mr. Bill Walker:** But if it's outdated or old, and when we know that we're in non-compliance, why would we not bring that forward to amend it so it is compliant and more modern and works for everybody?

**Ms. Shannon DeLeskie:** I think if the opportunity presented itself, that may be a useful thing to do, but I would argue that it's not in non-compliance to begin with. If you were modernizing the bills, that may be something you could do.

**Mr. Bill Walker:** Chair, can I ask for a point of clarification?

You're suggesting it's not in non-compliance, but when I read the report, that's the whole reason why we're here and this got into the report—because it is in non-compliance.

**Ms. Shannon DeLeskie:** I think that's a position that has been taken, with respect to the drafting of the report, that differs from the position that is taken by the ministry.

**Mr. Bill Walker:** But if it doesn't allow rolling incorporation and you're doing rolling incorporation, that to me suggests there is non-compliance happening.

**Ms. Shannon DeLeskie:** That's why I kept going back to section 47. Section 47 of the Legislation Act is

really important, because it sets out when those rules apply.

*Interjection.*

**Ms. Shannon DeLeskie:** Right. And (a) is clearly in situations where there is an express—(a) is where a contrary intention appears. That would be where the act specifically says you can incorporate the documents as they may be amended from time to time.

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But then it's an "or (b)," right? So (a) is one opportunity and (b) is a second door; it's a second window of opportunity to use the rolling incorporation. And that is where "its application would give to a term or provision a meaning that is inconsistent with the context." It doesn't require express language in the act; (b) doesn't require express language in the act, and that's where (b) become important, because (b) enables pieces of legislation like the Farm Implements Act. Could it be improved? Absolutely. But it's not, at this point in time, and (b) enables the continued use of a very important tool.

**Mr. Bill Walker:** Okay, so I'm still not clear as to why, if you say it could be improved and there is a method to amend the act, you would not want to do that, because one of the biggest things, when I've been sitting on this committee, is that it's supposed to be the least ambiguous language possible. This seems to be fairly ambiguous, because it's up to your interpretation if we use (a) or we use (b) or we go here or we go there. Why would we not take that ability, now that we have had it pointed out that there is a concern raised through the report?

What I don't want to do is get here in another year and have this same report come back saying, "We've noted that we're not in compliance," or whatever words we want to use, when we can fix it. I just don't understand. I think I just heard you say that it could be improved, that there is the ability if we wanted to. Why would the ministry not want to do that to make it clear and simple and not have to go through this process over and over again?

**Ms. Shannon DeLeskie:** So, today, I take no position on whether it should or should not be improved; that's not why I'm here to talk to you today. I would leave that to the committee to determine what they want to recommend in that regard. I want to make sure that it's clearly understood why, today, we're relying on the features that we are, but I leave it to the committee to go forward and prepare the report and make their recommendations.

**The Chair (Mr. Ted McMeekin):** Okay. Ms. French?

**Ms. Jennifer K. French:** Further to that, and just to have the best understanding—the Farm Implements Act, as you said, is fairly old and hasn't had the opportunity to come before the House and be updated in recent years. You said it's sort of pre-1990s. My understanding, then, is that if it were to come before the House and have the opportunity to be updated, we could take the opportunity then to fine-tune language or to expressly put in this section about rolling incorporation. But because that hasn't happened, you're pointing to the Legislation Act,

section 47(b), which is the contextual consideration. So we're kind of using that as the—because it isn't expressly stated, that's why you're saying that it's not non-compliant, it's just that we're relying on an older or broader point. This contextual consideration could mean anything, frankly.

To your point: I understand why you're saying, "Well, we've been relying on this, since there's nothing expressly stated." By our definitions or what the committee has chosen to look at before, it's non-compliant when we compare it to others or more updated ones. How would we go about changing it? Does it have to be—it can't be changed in regulation; it has to be an actual amendment to the bill. So it would then fall to the government, if they were going to update this bill.

Are you bringing it forward any time soon? No? Nothing? Bueller? No? Okay. So we're back to our original—if we make recommendations that are prescriptive or flexible.

**The Chair (Mr. Ted McMeekin):** Ms. Matthews.

**Ms. Deborah Matthews:** Oh, thank you very much. Chair, this has been a fascinating conversation, I must say, but the government is satisfied by the explanation provided by the ministry in this case. I have a motion to amend the draft report to reflect that. Can I read that motion now, Chair?

**The Chair (Mr. Ted McMeekin):** Okay. You can, indeed.

**Ms. Deborah Matthews:** If you could turn to page 3, I move that the paragraph beginning with "In our view," until the end of the paragraph entitled "Possible Recommendation" on page 3, as I said, be struck out—so those entire, I guess, two paragraphs and box—and replaced with the following:

*"Conclusion*

"The committee also had the opportunity to hear from ministry officials in person. Given the explanation provided by the ministry by letter and in person, the committee is satisfied and is not making a recommendation with respect to O. Reg. 201/17 amending regulation 365 of R.R.O. 1990 (General)."

**The Chair (Mr. Ted McMeekin):** Do we need to pause so copies of the motion can be made?

**Ms. Deborah Matthews:** Do we have copies? Oh, we happen to have copies.

**The Chair (Mr. Ted McMeekin):** Oh, we have copies. Surprise, surprise.

*Interjections.*

**The Chair (Mr. Ted McMeekin):** Yes.

**Mr. Bill Walker:** In the original report, on page 3, we're referencing Reg. 369. In your amended version, you're referencing regulation 365. Can we ask why?

**Ms. Deborah Matthews:** Let me just double-check on that.

*Interjections.*

**Ms. Deborah Matthews:** That is a typo. Good catch. Thank you.

**Mr. Bill Walker:** We're here to do good legislation.

**The Chair (Mr. Ted McMeekin):** So it should read?

**Ms. Deborah Matthews:** So, 369. Is that correct?

**The Chair (Mr. Ted McMeekin):** If everyone could make that adjustment. It should read “369.”

**Ms. Deborah Matthews:** Thank you.

**Ms. Jennifer K. French:** And the O. Reg. 201/17 thing is wrong.

**Ms. Deborah Matthews:** O. Reg. 201/17 is wrong?

**Ms. Jennifer K. French:** Isn’t it?

**Ms. Shannon DeLeskie:** That was the correct number.

**Ms. Jennifer K. French:** Is that correct? Okay. I was just making sure while we’re here.

**The Chair (Mr. Ted McMeekin):** Okay. Good point, Mr. Walker. We’ve got that clarified now. We have at least the right number. Any discussion on the motion? Ms. French.

**Ms. Jennifer K. French:** Just so that I’m clear—I recognize this is a draft report and that we can make changes and all of that. That’s fine. But, as prepared by Ms. Hauerstock, the recommendations or the points of clarification to identify anything—we’re just saying, “Never mind, nothing to see here, take it out.” Because we’re changing those recommendations, I’d like to know if Ms. Hauerstock has any concerns with removing a section of the report, if that’s appropriate to ask.

**The Chair (Mr. Ted McMeekin):** I think that’s a good question. Yes, Ms. Hauerstock?

**Ms. Tamara Hauerstock:** I think if the committee decides not to make a recommendation and would like to remove it, that’s certainly within their purview. The portion that remains expresses the issue. The motion that we have before us, if the committee approves it, would express the conclusion of the committee on this issue.

**Ms. Jennifer K. French:** So you don’t feel that by removing the section starting with “In our view,” that there is—we’re not removing substance from that that isn’t otherwise incorporated elsewhere by reference?

**Ms. Tamara Hauerstock:** The portion that remains, I think, expresses the review process, from my perspective. In other words, it expresses the issue that was noted, the concerns that we raised with the ministry and the ministry’s response.

**Ms. Jennifer K. French:** Okay.

**The Chair (Mr. Ted McMeekin):** Okay, so the committee can do what it wants.

**Ms. Jennifer K. French:** Some of us.

**The Chair (Mr. Ted McMeekin):** We can. This committee can do what it wants. That’s what I said.

There’s a motion on the floor. Is there any further debate on the motion itself? Seeing none, the motion has been moved. All those in favour of the motion?

**Ms. Deborah Matthews:** Can we have a recorded vote?

**The Chair (Mr. Ted McMeekin):** Sure. A recorded vote has been asked for.

### Ayes

Anderson, Crack, Matthews, Potts, Rinaldi.

**The Chair (Mr. Ted McMeekin):** The motion is carried.

Are members ready to vote on the report, as amended? *Interjection.*

**The Chair (Mr. Ted McMeekin):** Ms. Hauerstock has pointed out a typo. Go ahead.

**Ms. Tamara Hauerstock:** I noted this in passing, I believe, at our last meeting. At the bottom of page 1, under the heading “Regulations Reported,” I noted that we have decided to report two regulations. In fact, that should read “five regulations.”

**Ms. Jennifer K. French:** Where?

**Ms. Tamara Hauerstock:** It’s the third line under “Regulations Reported.”

**Interjection:** It says “12.”

**Ms. Tamara Hauerstock:** And then the following section says, “After considering the responses to our inquiries, we have decided to report two regulations....”

Actually, as I flipped through last meeting’s reporting, there are five regulations being reported on in this report. It’s under two ministries, so that’s where I made that error. So I would just update the “two” to “five.”

**The Chair (Mr. Ted McMeekin):** Thank you.

Any other questions for the witnesses? If not, thank you very much for attending.

Shall the draft report on regulations made in the second half of 2017, as amended, carry? Carried.

Shall the Chair sign off on the final copy of the draft report? I’ll be delighted to do that on your behalf.

Shall the report be translated? In how many languages would you like it translated? So be it.

Shall the report be printed? If we’ve got to translate it, we should print it.

*Laughter.*

It says here, “Look to the Clerk for advice on the final motion.”

**The Clerk of the Committee (Mr. Christopher Tyrell):** Much like last time, we have four options. Given the fact that there are no longer any recommendations being made in the report, I would recommend that the report simply be presented to the House.

**The Chair (Mr. Ted McMeekin):** Okay. Shall we present the report to the House? Carried.

Is there any further business? The standing committee stands adjourned.

*The committee adjourned at 0933.*





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